

MONTANA LEGISLATIVE HISTORY

Chapter 569 19 77

Bill H 462 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) Feb 04 ✓ C

Feb 24 ✓ C

_____ C

_____ C

Date Out Feb 24 ✓ C

S. Committee on State Administration

Hearing Date(s) Mar 23 ✓ C

Apr 01 ✓ C

_____ C

_____ C

Apr 02 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1 action, including inaction, which involves the use of
2 discretionary authority.

3 (6) "Public officer" includes any state officer except
4 a legislator or member of the judiciary or any elected
5 officer of any subdivision of the state.

6 (7) "State agency" includes the state; the legislature
7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

12 (8) "State officer" includes all elected officers and
13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
18 public officers, legislators, and employees. A public
19 officer, legislator, or employee shall carry out his duties
20 for the benefit of the people of the state. He may not use
21 his office, the influence created by his official position,
22 or the inside information gained by virtue of that position,
23 to advance any of his own, his relative's, or his
24 associate's personal economic interests, other than
25 advancing such strictly incidental benefits as may accrue to

1 any of them from the enactment or administration of laws
2 affecting the public generally.

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty under this section
5 is liable to the people of the state as a trustee of
6 property is liable to a beneficiary under 86-310 and shall
7 suffer such other liabilities as a private fiduciary would
8 suffer for abuse of his trust. The county attorney of the
9 county where the trust is violated may bring appropriate
10 judicial proceedings on behalf of the people. Any moneys
11 collected in such actions shall be paid to the general fund
12 of the county.

13 (3) This section sets forth the fundamental standard
14 of conduct for all public officers, legislators, and
15 employees. The following sections set forth various rules of
16 conduct, the transgression of any of which is, as such, a
17 violation of this standard, and various ethical principles,
18 the transgression of which may, in some cases, contribute to
19 a violation of this standard. The enumeration of prohibited
20 acts and cautioned acts does not exculpate an act not thus
21 enumerated if that act amounts to a breach of fiduciary
22 duty.

23 Section 4. Rules of conduct for all public officers,
24 legislators, and employees. (1) Proof of commission of any
25 act enumerated in this section is proof that the actor has

1 breached his fiduciary duty. A public officer, legislator,
2 or employee may not:

3 (a) disclose or use confidential information acquired
4 in the course of his official duties in order to further his
5 personal economic interests; or

6 (b) accept a gift or accept an economic benefit
7 tantamount to a gift under circumstances from which it can
8 reasonably be inferred that a major purpose of the gift is
9 to influence him in the performance of his official duties
10 or to reward him for official action he has taken.

11 (2) An economic benefit tantamount to a gift includes,
12 without limitation, a loan at a rate of interest
13 substantially lower than the commercial rate then currently
14 prevalent for similar loans and compensation received for
15 private services rendered at a rate substantially exceeding
16 the fair market value of such services. Campaign
17 contributions reported as required by statute are not gifts
18 or economic benefits tantamount to gifts.

19 Section 5. Rules of conduct for legislators. Proof of
20 commission of any act enumerated in this section is proof
21 that the legislator committing the act has breached his
22 fiduciary duty. A legislator may not:

23 (1) accept a fee, contingent fee, or any other
24 compensation, except his official compensation provided by
25 statute, for promoting or opposing the passage of

1 legislation;

2 (2) seek other employment for himself or contract for
3 his services by the use or attempted use of his office.

4 Section 6. Rules of conduct for state officers and
5 state employees. (1) Proof of commission of any act
6 enumerated in this section is proof that the actor has
7 breached his fiduciary duty.

8 (2) A state officer or a state employee may not:

9 (a) use state time, facilities, or equipment for his
10 private business purposes;

11 (b) engage in a substantial financial transaction for
12 his private business purposes with a person whom he inspects
13 or supervises in the course of his official duties;

14 (c) assist any person for a fee or other compensation
15 in obtaining a contract, claim, license, or other economic
16 benefit from his agency;

17 (d) assist any person for a contingent fee in
18 obtaining a contract, claim, license, or other economic
19 benefit from any state agency; or

20 (e) perform an official act directly affecting a
21 business or other undertaking in which he either has a
22 substantial financial interest or is engaged as counsel,
23 consultant, representative, or agent.

24 (3) A department head or a member of a quasi-judicial
25 or rule-making board may perform an official act

1 notwithstanding subsection (2) (e) if his participation is
2 necessary to the administration of a statute and if he
3 complies with the voluntary disclosure procedures under
4 [section 10].

5 Section 7. Rules of conduct for local government
6 officers and employees. (1) Proof of commission of any act
7 enumerated in this section is proof that the actor has
8 breached his fiduciary duty.

9 (2) An officer or employee of local government may
10 not:

11 (a) engage in a substantial financial transaction for
12 his private business purposes with a person whom he inspects
13 or supervises in the course of his official duties; or

14 (b) perform an official act directly affecting a
15 business or other undertaking in which he either has a
16 substantial financial interest or is engaged as counsel,
17 consultant, representative, or agent.

18 (3) A member of the governing body of a local
19 government may perform an official act notwithstanding this
20 section when his participation is necessary to obtain a
21 quorum or otherwise enable the body to act, if he complies
22 with the voluntary disclosure procedures under [section 10].

23 Section 8. Ethical principles for legislators. (1) The
24 principles in this section are intended only as guides to
25 legislator conduct and do not constitute violations as such

1 of the public trust of legislative office.

2 (2) Whenever feasible and taking into account the
3 fact that legislative service is part-time, a legislator
4 should avoid accepting or retaining an economic benefit
5 which presents a substantial threat to his independence of
6 judgment.

7 (3) When a legislator must take official action on a
8 legislative matter as to which he has a conflict situation
9 created by a personal, family, or client legislative
10 interest, he should consider eliminating the interest
11 creating the conflict or abstaining from the official
12 action. In making his decision, he should further consider:

13 (a) whether the conflict impedes his independence of
14 judgment;

15 (b) the effect of his participation on public
16 confidence in the integrity of the legislature; and

17 (c) whether his participation is likely to have any
18 significant effect on the disposition of the matter.

19 (4) A conflict situation may arise from legislation
20 affecting less than the entire statewide membership of a
21 class but does not arise from legislation affecting the
22 entire statewide membership of a class. Examples of a class
23 are all ranchers, all teachers in the public schools, or all
24 members of a licensed profession or occupation.

25 Section 9. Ethical principles for all public officers,

1 legislators, and employees. (1) The principles in this
2 section are intended as guides to conduct and do not
3 constitute violations as such of the public trust of office
4 or employment in state or local government. However, failure
5 to observe one of these principles may be taken as evidence
6 tending to establish, in conjunction with all the other
7 facts of a case, a breach of fiduciary duty.

8 (2) A public officer or employee should not acquire an
9 interest in any business or undertaking which he has reason
10 to believe may be directly affected to its economic benefit
11 by official action to be taken by his agency.

12 (3) A public officer or employee should not, within
13 the months following the voluntary termination of his office
14 or employment, obtain employment in which he will take
15 direct advantage, unavailable to others, of matters with
16 which he was directly involved during his term or
17 employment. These matters are rules, other than rules of
18 general application which he actively helped to formulate
19 and applications, claims, or contested cases in the
20 consideration of which he was an active participant.

21 (4) A public officer, legislator, or employee should
22 not perform an official act directly affecting a business or
23 other undertaking to its economic detriment when he has a
24 substantial financial interest in a competing firm or
25 undertaking.

1 Section 10. Voluntary disclosure. A public officer,
2 legislator, or employee may, prior to acting in a manner
3 which may impinge on his fiduciary duty, disclose the nature
4 of his private interest which creates the conflict. He shall
5 make the disclosure to the commissioner of campaign finances
6 and practices, listing the amount of his financial interest,
7 if any, the purpose and duration of his services rendered,
8 if any, and the compensation received for the services or
9 such other information as is necessary to describe his
10 interest. If he then performs the official act involved, he
11 shall state for the record the fact and summary nature of
12 the interest disclosed at the time of performing the act.

13 Section 11. Powers of the commissioner. The
14 commissioner of campaign finances and practices may:

15 (1) issue and cause to be published advisory opinions,
16 with such deletions as may be necessary to protect the
17 identity of the requesting party, at the request of a public
18 officer, legislator, or employee contemplating an action
19 which may or may not be a breach of his fiduciary duty;

20 (2) keep and permit reasonable public access to
21 voluntary disclosure statements;

22 (3) make rules for the conduct of his affairs under
23 this chapter.

24 Section 12. Section 94-7-401, R.C.N. 1947, is amended
25 to read as follows:

1 "94-7-401. Official misconduct. (1) A public servant
2 commits the offense of official misconduct when, in his
3 official capacity, he commits any of the following acts:

4 (a) purposely or negligently fails to perform any
5 mandatory duty as required by law or by a court of competent
6 jurisdiction; ~~or~~

7 (b) knowingly performs an act in his official capacity
8 which he knows is forbidden by law; ~~or~~

9 (c) with the purpose to obtain advantage for himself
10 or another, he performs an act in excess of his lawful
11 authority or in breach of the public trust of his office or
12 employment; ~~or~~

13 (d) solicits or knowingly accepts for the performance
14 of any act a fee or reward which he knows is not authorized
15 by law; or

16 (e) knowingly conducts a meeting of a public agency in
17 violation of ~~section~~ 82-3402.

18 (2) A public servant convicted of the offense of
19 official misconduct shall be fined not to exceed ~~five~~
20 ~~hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail
21 for a term not to exceed ~~six~~ ~~(6)~~ months, or both.

22 (3) The district court shall have exclusive
23 jurisdiction in prosecutions under this section, and any
24 action for official misconduct must be commenced by an
25 information filed after leave to file has been granted by

1 the district court or after a grand jury indictment has been
2 found.

3 (4) A public servant who has been charged as provided
4 in subsection (3) may be suspended from his office without
5 pay pending final judgment. Upon final judgment of
6 conviction he shall permanently forfeit his office. Upon
7 acquittal he shall be reinstated in his office and shall
8 receive all back pay.

9 (5) This section does not affect any power conferred
10 by law to impeach or remove any public servant or any
11 proceeding authorized by law to carry into effect such
12 impeachment or removal."

--End--

JUDICIARY COMMITTEE
February 4, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Friday. All members were present.

Scheduled for hearing were House Bills 462 and 595.

Mr. Hank Burgess of the Board of Pardons asked if he could present testimony because of the shortage of time when the hearing was held on House Bill 464. The committee collectively agreed that he could do so.

HOUSE BILL 464:

HANK BURGESS, BOARD OF PARDONS:

I have been on the board for 5 1/2 years. We did a 2 year study of the Montana corrections system. We should'nt have a full-time parole board. We should leave the board as it is. Our recommendation still stands. One of the reasons is the heavy cost, they would need a car, secretary, office, at present, a year costs a little over 60,000 and it could go up to 160,000 dollars. There is not enough work for a full-time board. We spend a good deal of time preparing for the board. We meet twice a month and handle an average of 30 parolees a month. Out of 50 cases only 30 are parole cases. He mentioned also the professional staff, an executive secretary and a parole officer, and a hearing officer. Then there are 3 appointed members. The members can be very objective. I think it is much easier to get rid of a part-time appointed member rather than a full-time state employee.

During 1976, 371 inmates were interviewed for parole and 274 were granted parole. 27% were sent back for more time. 83% were first time offenders and for the most part they were young and did some stupid thing, 13.8 months is the average length of stay. The rate of return is 28.8 on a parole revocation and 60% elsewhere. This is not a recitivism figure. We should not confuse what is going on nationally with Montana. Our system is working pretty darn well. I might say that I am a little concerned about some of the legislation. 72% of the people we parole are either clean or they are not getting caught. A majority had been young 1st time offenders. This 70% success rate is rather marvelous, in spite of the lack of education. Of these, 70% are alcohol related, 20% drug related, 25% mental health, 7% mentally deficient and 15% at a given time are hard-core offenders. Why not put this 100,000 into drug and alcohol programs, or mental health programs need help.

There was general discussion about the figures he had given and Representative Holmes mentioned the employment or lack of it.

February 4, 1977
Page 3

REPRESENTATIVE ROTH:

On page 6, what is state water.

MR. BROWN referred her to page 3, line 10 of the definition. These streams will be done as they get into an area.

It was asked about the potential impact on Cabin Creek in the North Fork area, and Mr. Brown said, in some cases it may mean lowering and in some raising the classification. They will do all of the streams in an area. We are getting additional federal money for the statewide 208 program. There are 4 designated areas doing their own water quality management planning, and the area in the Flathead is one of them.

2.2 million; 60,000 EPA ; state match with 25% to federal 75%.

REPRESENTATIVE SCULLY:

Does the department now have the ability to levy a fine.

MR. BROWN:

No, we have to file a court action.

REPRESENTATIVE CONROY:

Apparently this is designed to take care of industrial sitings. Have you done any work on farms, such as for saline seep?

MR. WILLIAMS:

Only on state lands, I question that we have any regulatory control.

No further questions, the hearing closed on HB 585.

THE HEARING OPENED ON HOUSE BILL #462.

REPRESENTATIVE MELOY, DISTRICT #29:

This is the identical bill with the amendments that went through the House and was killed in the Senate. The constitution requires the legislature to provide a code of ethics. It establishes a set of standards that all public officials must conform to.

He went through the bill, step by step, and explained it. He commented that there are separate standards for separate types of individuals.

REPRESENTATIVE VINCENT, DISTRICT #78:

The holding of public office or employment is a public trust, and I think the passage of this legislation would do a lot to preserve that confidence. Article 2, section 4 of the constitution states we have an obligation to do this.

February 4, 1977

Page 4

MIKE PICHETTE, EXECUTIVE SECRETARY-DEMOCRATIC PARTY:

We are on record in favor of HB 462. He read two parts of the platform. He commented on the fact a legislator is not to accept a fee for a favor and that on page 5, campaign contributions are exempt.

REPRESENTATIVE MELOY:

Do you have a statute which prohibits conflicts of intent.

It was mentioned that the only statute pertaining was so broad that we don't have anything.

REPRESENTATIVE MELOY:

I think this bill is too weak but it is a bare minimum that must be adopted.

REPRESENTATIVE CONROY:

What about section 3, page 3, asking about job recommendations.

The question was asked, on page 5, line 6, are we taking away the role of the lobbyist. Discussion about this.

REPRESENTATIVE MELOY:

Discussion about private firms, getting contracts, the reason for the bill, and the fact that there is a code of ethics adopted in Hawaii.

Discussion about the meaning of judiciary and the meaning of fiduciary.

REPRESENTATIVE TEAGUE:

We have already taken an oath. I don't really see that we need this code.

REPRESENTATIVE RAMIREZ:

It seems to me that you are making a real constitutional problem by making it so general and then making a criminal penalty. There is an ambiguity.

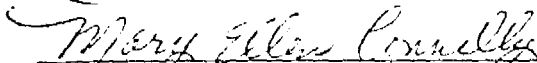
CHARLIE BELL, COMMON CAUSE:

We are the citizens lobby to make government more open. We fully support House Bill 462. (statement attached)

The hearing closed on House Bill 462.

The meeting adjourned at 11:45 a.m.


JOHN P. SCULLY, CHAIRMAN


Mary Ellen Connolly, Secretary

Common Cause of MONTANA

February 4, 1977

I am Charley Dell representing Common Cause of Montana.

Common Cause is a citizen's lobby that works at the national and state levels to try to make government more open, accountable, & responsive to the people.

Common Cause fully supports HB462 just as we supported
Article XIII, sec. 4 of the Montana Constitution which five years ago mandated the legislature to provide a code of ethics. It has not yet been done.

Corrupt and unethical behavior by relatively few public officials has undermined the faith and trust of the governed. Public office is a public trust -- any effort to realize personal gain through public office is a violation of that trust. Because of the part-time nature of most elected and appointed positions in state and local government, it is inevitable that officials will have private interests and sources of income that conflict with their public duties. Making these potential conflicts known to the public gives citizens information on which to judge whether their representatives act in the public interest rather than for private gain.

We would like to see the Montana code of ethics even stronger with mandatory financial disclosure ~~by category or value~~ ^{for elected officials and top appointed officials}. We would also like to see citizen standing to sue to ~~xxx~~ enforce the law if the enforcement agency, the commissioner, does not. We urge a "do pass" on BB462

JUDICIARY COMMITTEE

EXECUTIVE SESSION

February 24, 1977

The House Judiciary Committee was called to order by Chairman Scully at 7:00 a.m. on Thursday February 24, 1977 in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Kennerly and Teague.

REPRESENTATIVE SEIFERT moved the committee adopt the sub-committee report on water given by Representative Day. The motion carried with Representative Lory voting "no".

HOUSE BILL #486:

REPRESENTATIVE HAND moved "do not pass".

The motion carried with Representatives Holmes, Scully, Eudaily and Courtney voting "no".

HOUSE BILL #574:

REPRESENTATIVE DUSSAULT moved to amend lines 34 on page 2 and lines 9 and 10 on page 2.

REPRESENTATIVE LORY moved a substitute motion "do not pass". The motion carried with Representatives Ramirez, Eudaily, McLane and Scully voting "no".

HOUSE BILL #639:

REPRESENTATIVE DUSSAULT moved "do not pass".

The motion carried with the vote unanimous.

HOUSE BILL #782:

REPRESENTATIVE RAMIREZ moved the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE RAMIREZ moved "do pass as amended".

The motion carried with the following representatives voting "no". Representatives Seifert, Scully, Courtney, Baeth, Hand, and Eudaily.

HOUSE BILL #795:

REPRESENTATIVE BAETH moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #800:

REPRESENTATIVE RAMIREZ moved to accept the proposed amendments. The motion carried. REPRESENTATIVE HOLMES moved to strike the repealer section. The motion to strike carried.

REPRESENTATIVE KEYSER moved "do not pass as amended"

REPRESENTATIVE HOLMES moved a substitute motion "do pass as amended".

REPRESENTATIVE RAMIREZ moved to amend page 6, line 20. The motion to amend carried with Representative Eudaily voting "no".

The question was called and the motion "do pass as amended" carried with the following representatives voting "no". Representatives Courtney, Keyser, Seifert, Eudaily, Scully and Conroy.

HOUSE BILL #761:

REPRESENTATIVE RAMIREZ moved to reconsider action taken on a previous meeting. The motion to reconsider passed with the vote 7 to 5. REPRESENTATIVE RAMIREZ moved an additional amendment. The motion carried with Representatives Baeth, Seifert, Scully and Hand voting "no". REPRESENTATIVE RAMIREZ moved "do pass as amended". The motion carried with Representatives Baeth, Seifert, Scully and Hand voting "no".

HOUSE BILL #738:

REPRESENTATIVE DUSSAULT stated the amendments for this bill were not ready and she would present them on the floor. The motion "do pass" was again presented although action had been taken already. The motion carried with the vote unanimous.

HOUSE BILL #739:

REPRESENTATIVE KEYSER reported from the sub-committee and suggested an interim study be conducted. He moved "do not pass" and the motion carried with the following representatives voting "no". Representatives Baeth, Dussault, Holmes and Day.

HOUSE BILL #462:

REPRESENTATIVE RAMIREZ reported from the sub-committee. He moved the proposed amendments. Representative Holmes moved an additional amendment. The motion to amend carried with the vote unanimous. REPRESENTATIVE DUSSAULT moved "do pass as amended". The motion carried with Representatives Conroy, McLane, Seifert and Scully voting "no".

HOUSE BILL #814:

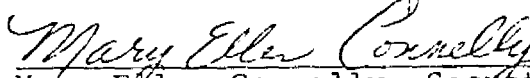
REPRESENTATIVE DAY moved to table this bill which had been held in committee pending the outcome of a similar bill in the Senate. The motion carried with the vote unanimous.

HOUSE BILL #685:

REPRESENTATIVE RAMIREZ moved to take from the table. The motion carried with the vote unanimous. REPRESENTATIVE RAMIREZ moved some amendments. The motion carried. REPRESENTATIVE LORY moved "do pass as amended". The motion carried with the vote unanimous.

The meeting adjourned at 9:55 a.m.


JOHN P. SCULLY, CHAIRMAN


Mary Ellen Connelly, Secretary

11:00 a.m.
March 23, 1977

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

The meeting of the State Administration Committee was called to order by Chairman Thomas Towe on the above date in Room 410 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 462.

Representative Mike Meloy, District 29, is chief sponsor of this bill. Since the new Constitution was ratified which requires the Legislature to have a code of ethics of officers and employees one of the only constitutional provisions in this country is that it requires the Legislature to promulgate the code of ethics. He stated he reintroduced this bill this session and the House Judiciary Committee after floor debate made the amendments before you. Since this is all new language anything that is stricken or added represents what was done in the House Judiciary Committee. The amendments put him in an awkward position because it comes close to a fine line whether the bill is better alive or dead. He thinks the bill is better than nothing and that is why he agreed to go ahead and carry the bill.

He stated in the first three sections - Statement of Purpose, Definitions and Public Trust - essentially a person who is an officer or employee is vested with authority to make decisions and he should make the decision with the integrity the public expects.

Section 4 - 6, Rules of Conduct. There are different standards here that apply to officers and employees of State Government who work full-time and for people working part-time (such as legislators) and for local governmental officials. There is a separate set of standards in Section 4 that relate to everybody. The House amendments would change the language of the introduced bill. The House Judiciary Committee has added a great deal of flexibility to this statute.

Section 7 - Rules of Conduct. Provides for rules of conduct for local government officials.

Section 8 - Ethical Principles for Legislators. These are things that legislators ought not be doing. Again, the House Judiciary Committee amended this.

Section 11 - Powers of the Secretary of State. This has been very substantially changed. First, the criminal penalty for conflict for violation of the act has been taken out. He really preferred that the Commissioner of Campaign Finances and Practices issue the opinions.

He stated he has been trying for awhile to get a bill enacted that would provide for a code of ethics. People have no where to go if they have a conflict. Right now there is nothing in the law and the accusations that are made can be made without providing the person accused of the conflict any defense. That is probably the most important reason for having this bill.

PROPONENTS:

Natalie Cannon, Common Cause of Montana. She stated any effort to realize personal gains is a violation of trust. It is inevitable that some officials will have some private interest and income that will conflict with the public duties. Common Cause reluctantly supports HB 462 in its present form but they do support it. She advised that the Committee look this over carefully to see if amendments could be made to make it stronger.

Chairman Towe stated you indicated that there are two separate rules, one for full-time and one for part-time. Where is this in the bill?

Representative Meloy stated section 6 provides rules of conduct for state officers and state employees.

Chairman Towe asked how come we don't have a sounding board as we do with the election commissioner?

Representative Meloy stated you could have the Judiciary Committee not strike the language on page 11, lines 11-15.

Senator Story asked on these various Boards, we are not doing anything that will take the professional people out of the Boards are we?

Representative Meloy stated no.

Chairman Towe asked that Representative Meloy come back some time because the Committee still had questions. Representative Meloy had to go to another meeting.

Hearing closed on HB 462.

CONSIDERATION OF HOUSE BILL 297.

Representative John Driscoll is the chief sponsor of this bill. He stated this is an annual sessions bill introduced by him in the House. The bill as it was originally proposed only received 50 votes and on final vote would have received only 49. The bill was brought back on second reading and heavily amended. The idea that Representative Ramirez put into this bill is essentially

Gate Ad. COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3-23-77

[illegible]

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
APRIL 1, 1977

The meeting was called to order by Senator Towe, Chairman, at 4:40 p.m. in Room 410 of the Capitol Building. Committee members present were Senators Towe, Brown, Rasmussen, Roskie, Jergeson, Blaylock, Devine, and Story.

The following bills were discussed:

Appointments
HB 213
HB 297
HB 462
HJR 83
HB 488

APPOINTMENT OF DR. ROBERT WAMBACH

Senator Brown moved the committee request a transcript of the hearing on Dr. Robert Wambach held this morning. THE MOTION FAILED WITH SENATORS JERGESON, BROWN, TOWE AND STORY VOTING AYE AND SENATORS DEVINE, BLAYLOCK, RASMUSSEN, AND ROSKIE VOTING NO.

HOUSE BILL 213

Senator Brown moved House Bill 213 Be Concurred In.

Senator Rasmussen made a substitute motion to table the bill. THE MOTION CARRIED WITH SENATORS DEVINE, BLAYLOCK AND BROWN VOTING NO.

HOUSE BILL 297

Senator Roskie moved House Bill 297 Be Concurred In. THE MOTION CARRIED WITH SENATORS STORY AND DEVINE VOTING NO.

HOUSE BILL 462

Senator Jergeson moved the amendments on the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Jergeson moved House Bill 462 Be Concurred In. THE MOTION CARRIED WITH SENATORS ROSKIE, DEVINE AND STORY VOTING NO.

APPOINTMENT

Senator Brown moved to reconsider the action taken on the transcript request. He stated it was only fair since all the Senators got copies of the article condemning him and the transcript should be available to answer the charges in the article. The whole Senate did vote to send the appointment back to committee and therefore they should have the opportunity to study the transcript as only the committee members were at the hearing. THE MOTION CARRIED WITH SENATORS BLAYLOCK, DEVINE AND STORY VOTING NO.

STANDING COMMITTEE REPORT

April 2

19 77

MR. President

We, your committee on State Administration

having had under consideration House Bill No. 462

Respectfully report as follows: That House Bill No. 462,
third reading, be amended as follows:

1. Amend page 4, section 3, line 12.

Following: "county"

Strike: "STATE"

Insert: "aggrieved agency"

2. Amend page 7, section 6, line 16.

Following: line 16,

Insert: "(4) Subsection (2) (d) does not apply to a member of a board, commission, council, or committee unless he is also a full time state employee."

3. Amend page 11, section 11, line 15.

Following: line 15

Insert: "(1) issue and cause to be published advisory opinions, with such deletions as may be necessary to protect the identity of the requesting party, at the request of a public officer, legislator, or employee contemplating an action which may or may not be a breach of his fiduciary duty;"

~~XXXXXX~~

Renumber: subsequent subsections

AND AS SO AMENDED, BE CONCURRED IN

Chairman.

HOUSE BILL NO. 462

INTRODUCED BY MELOY, HOLMES, DUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY;"

~~AMENDING SECTION 94-7-401, R.C.M., 1947."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Statement of purpose. The purpose of this act is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government, and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this act recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Section 2. Definitions. As used in this act the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof, or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

- (a) an ownership interest in a business;
 - (b) a creditor interest in an insolvent business;
 - (c) an employment or prospective employment for which negotiations have begun;
 - (d) an ownership interest in real or personal property;
 - (e) a loan or other debtor interest; or
 - (f) a directorship or officership in a business.
- (5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other

FINAL PRINTINGADOPTED BY
HOUSE OF REPRESENTATIVES
AND SENATE

-2-

HB 462

1 action, including inaction, which involves the use of
2 discretionary authority.

3 (6) "Public officer" includes any state officer except
4 a legislator or member of the judiciary or any elected
5 officer of any subdivision of the state.

6 (7) "State agency" includes the state; the legislature
7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

12 (8) "State officer" includes all elected officers and
13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
18 public officers, legislators, and employees. A public
19 officer, legislator, or employee shall carry out his duties
20 for the benefit of the people of the state. He may not use
21 his office, the influence created by his official position,
22 or the inside information gained by virtue of that position
23 to advance any of his own, his relative's, or his
24 associate's personal economic interests, other than
25 advancing such strictly incidental benefits as may accrue to

1 ~~any of them from the enactment or administration of laws~~
2 ~~affecting the public generally.~~

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty ~~under this section~~
5 is liable to the people of the state as a trustee of
6 property is liable to a beneficiary under 86-310 and shall
7 suffer such other liabilities as a private fiduciary would
8 suffer for abuse of his trust. The county attorney of the
9 county where the trust is violated may bring appropriate
10 judicial proceedings on behalf of the people. Any moneys
11 collected in such actions shall be paid to the general fund
12 of the county STATE AGGRIEVED AGENCY.

13 (3) ~~This section sets forth the fundamental standard~~
14 ~~of conduct for all public officers, legislators, and~~
15 ~~employees.~~ The following sections set forth various rules of
16 conduct, the transgression of any of which is, as such, a
17 violation of ~~this standard~~ FIDUCIARY DUTY, and various
18 ethical principles, the transgression of ~~which may in some~~
19 ~~cases contribute to a violation of this standard.~~ ~~The~~
20 ~~enumeration of prohibited acts and cautioned acts does not~~
21 ~~excuse an act not thus enumerated if that act amounts to~~
22 ~~a breach of fiduciary duty.~~ ANY OF WHICH IS NOT, AS SUCH, A
23 VIOLATION OF FIDUCIARY DUTY.

24 Section 4. Rules of conduct for all public officers,
25 legislators, and employees. (1) Proof of commission of any

1 act enumerated in this section is proof that the actor has
2 breached his fiduciary duty. A public officer, legislator,
3 or employee may not:

4 (a) disclose or use confidential information acquired
5 in the course of his official duties in order to further
6 SUBSTANTIALLY his personal economic interests; or

7 ~~(b) accept a gift or accept an economic benefit~~
8 ~~tantamount to a gift under circumstances from which it can~~
9 ~~reasonably be inferred that a major purpose of the gift is~~
10 ~~to influence him in the performance of his official duties~~
11 ~~or to reward him for official action he has taken. ACCEPT A~~
12 ~~GIFT OF SUBSTANTIAL VALUE OR A SUBSTANTIAL ECONOMIC BENEFIT~~
13 ~~TANTAMOUNT TO A GIFT;~~

14 (1) WHICH WOULD TEND IMPROPERLY TO INFLUENCE A
15 REASONABLE PERSON IN HIS POSITION TO DEPART FROM THE
16 FAITHFUL AND IMPARTIAL DISCHARGE OF HIS PUBLIC DUTIES; OR

17 (II) WHICH HE KNOWS OR WHICH A REASONABLE PERSON IN
18 HIS POSITION SHOULD KNOW UNDER THE CIRCUMSTANCES IS
19 PRIMARILY FOR THE PURPOSE OF REWARDING HIM FOR OFFICIAL
20 ACTION HE HAS TAKEN.

21 (2) An economic benefit tantamount to a gift includes,
22 without limitation, a loan at a rate of interest
23 substantially lower than the commercial rate then currently
24 prevalent for similar loans and compensation received for
25 private services rendered at a rate substantially exceeding

1 the fair market value of such services. Campaign
2 contributions reported as required by statute are not gifts
3 or economic benefits tantamount to gifts.

4 Section 5. Rules of conduct for legislators. Proof of
5 commission of any act enumerated in this section is proof
6 that the legislator committing the act has breached his
7 fiduciary duty. A legislator may not:

8 (1) accept a fee, contingent fee, or any other
9 compensation, except his official compensation provided by
10 statute, for promoting or opposing the passage of
11 legislation;

12 (2) seek other employment for himself or SOLICIT A
13 contract for his services by the use ~~or attempted use~~ of his
14 office.

15 Section 6. Rules of conduct for state officers and
16 state employees. (1) Proof of commission of any act
17 enumerated in this section is proof that the actor has
18 breached his fiduciary duty.

19 (2) A state officer or a state employee may not:

20 (a) use state time, facilities, or equipment for his
21 private business purposes;

22 (b) engage in a substantial financial transaction for
23 his private business purposes with a person whom he inspects
24 or supervises in the course of his official duties;

25 (c) assist any person for a fee or other compensation

1 in obtaining a contract, claim, license, or other economic
2 benefit from his agency;

3 (d) assist any person for a contingent fee in
4 obtaining a contract, claim, license, or other economic
5 benefit from any state agency; or

6 (e) perform an official act directly AND SUBSTANTIALLY
7 affecting ID ITS ECONOMIC BENEFIT a business or other
8 undertaking in which he either has a substantial financial
9 interest or is engaged as counsel, consultant,
10 representative, or agent.

11 (3) A department head or a member of a quasi-judicial
12 or rulemaking board may perform an official act
13 notwithstanding subsection (2)(e) if his participation is
14 necessary to the administration of a statute and if he
15 complies with the voluntary disclosure procedures under
16 [section 10].

17 (4) SUBSECTION (2)(D) DOES NOT APPLY TO A MEMBER OF A
18 BOARD, COMMISSION, COUNCIL, OR COMMITTEE UNLESS HE IS ALSO A
19 FULL-TIME STATE EMPLOYEE.

20 Section 7. Rules of conduct for local government
21 officers and employees. (1) Proof of commission of any act
22 enumerated in this section is proof that the actor has
23 breached his fiduciary duty.

24 (2) An officer or employee of local government may
25 not:

1 (a) engage in a substantial financial transaction for
2 his private business purposes with a person whom he inspects
3 or supervises in the course of his official duties; or

4 (b) perform an official act directly AND SUBSTANTIALLY
5 affecting ID ITS ECONOMIC BENEFIT a business or other
6 undertaking in which he either has a substantial financial
7 interest or is engaged as counsel, consultant,
8 representative, or agent.

9 (3) A member of the governing body of a local
10 government may perform an official act notwithstanding this
11 section when his participation is necessary to obtain a
12 quorum or otherwise enable the body to act, if he complies
13 with the voluntary disclosure procedures under [section 10].

14 Section 8. Ethical principles for legislators. (1) The
15 principles in this section are intended only as guides to
16 legislator conduct and do not constitute violations as such
17 of the public trust of legislative office.

18 ~~(2) Whenever feasible and taking into account the~~
19 ~~fact that legislative service is part-time, a legislator~~
20 ~~should avoid accepting or retaining an economic benefit~~
21 ~~which presents a substantial threat to his independence of~~
22 ~~judgment.~~

23 ~~(3) (2) When a legislator must take official action on~~
24 ~~a legislative matter as to which he has a conflict situation~~
25 ~~created by a personal, family, or client legislative~~

1 ~~interest OR FINANCIAL INTEREST WHICH WOULD BE DIRECTLY AND~~
 2 ~~SUBSTANTIALLY AFFECTED BY THE LEGISLATIVE MATTER,~~ he should
 3 consider ~~DISCLOSING OR~~ eliminating the interest creating the
 4 conflict or abstaining from the official action. In making
 5 his decision, he should further consider:

6 (a) whether the conflict impedes his independence of
 7 judgment;

8 (b) the effect of his participation on public
 9 confidence in the integrity of the legislature; and

10 (c) whether his participation is likely to have any
 11 significant effect on the disposition of the matter.

12 ~~(4)(3) A conflict situation may arise from legislation~~
 13 ~~affecting less than the entire statewide membership of a~~
 14 ~~class--but does not arise from legislation affecting the~~
 15 ~~entire statewide membership of a class. Examples of a class~~
 16 ~~are--all ranchers, all teachers in the public schools, or all~~
 17 ~~members of a licensed profession or occupation.~~

18 (4) IF A LEGISLATOR ELECTS TO DISCLOSE THE INTEREST
 19 CREATING THE CONFLICT, HE SHALL DO SO AS PROVIDED IN THE
 20 JOINT RULES OF THE LEGISLATURE.

21 Section 9. Ethical principles for ~~all~~ public officers,
 22 ~~legislators~~ and employees. (1) The principles in this
 23 section are intended as guides to conduct and do not
 24 constitute violations as such of the public trust of office
 25 or employment in state or local government. ~~However, failure~~

1 ~~to observe one of these principles may be taken as evidence~~
 2 ~~tending to establish, in conjunction with all the other~~
 3 ~~facts of a case, a breach of fiduciary duty.~~

4 (2) A public officer or employee should not acquire an
 5 interest in any business or undertaking which he has reason
 6 to believe may be directly AND SUBSTANTIALLY affected to its
 7 economic benefit by official action to be taken by his
 8 agency.

9 (3) A public officer or employee should not, within
 10 the months following the voluntary termination of his office
 11 or employment, obtain employment in which he will take
 12 direct advantage, unavailable to others, of matters with
 13 which he was directly involved during his term or
 14 employment. These matters are rules, other than rules of
 15 general application which he actively helped to formulate
 16 and applications, claims, or contested cases in the
 17 consideration of which he was an active participant.

18 (4) A public officer, ~~legislators~~ or employee should
 19 not perform an official act directly AND SUBSTANTIALLY
 20 affecting a business or other undertaking to its economic
 21 detriment when he has a substantial financial interest in a
 22 competing firm or undertaking.

23 Section 10. Voluntary disclosure. A public officer,
 24 ~~legislators~~ or employee may, prior to acting in a manner
 25 which may impinge on his fiduciary duty, disclose the nature

1 of his private interest which creates the conflict. He shall
2 make the disclosure IN WRITING to the ~~commissioner of~~
3 ~~campaign finances and practices~~ SECRETARY OF STATE, listing
4 the amount of his financial interest, if any, the purpose
5 and duration of his services rendered, if any, and the
6 compensation received for the services or such other
7 information as is necessary to describe his interest. If he
8 then performs the official act involved, he shall state for
9 the record the fact and summary nature of the interest
10 disclosed at the time of performing the act.

11 Section 11. Powers of the commissioner SECRETARY OF
12 STATE. The ~~commissioner of campaign finances and practices~~
13 SECRETARY OF STATE may:

14 ~~(1) issue and cause to be published advisory opinions,~~
15 ~~with such deletions as may be necessary to protect the~~
16 ~~identity of the requesting party, at the request of a public~~
17 ~~officer, legislator, or employee, contemplating an action~~
18 ~~which may or may not be a breach of his fiduciary duty;~~

19 ~~(1) ISSUE AND CAUSE TO BE PUBLISHED ADVISORY OPINIONS,~~
20 ~~WITH SUCH DELETIONS AS MAY BE NECESSARY TO PROTECT THE~~
21 ~~IDENTITY OF THE REQUESTING PARTY, AT THE REQUEST OF A PUBLIC~~
22 ~~OFFICER, LEGISLATOR, OR EMPLOYEE, CONTEMPLATING AN ACTION~~
23 ~~WHICH MAY OR MAY NOT BE A BREACH OF HIS FIDUCIARY DUTY;~~

24 (1) ISSUE ADVISORY OPINIONS WITH SUCH DELETIONS AS ARE
25 NECESSARY TO PROTECT THE IDENTITY OF THE REQUESTING PARTY OR

1 THE PARTY ABOUT WHOM THE OPINION IS WRITTEN;

2 ~~(2)(1)(2)(1)(2)~~ keep and permit reasonable public
3 access to voluntary disclosure statements;

4 ~~(3)(2)(3)(2)(3)~~ make rules for the conduct of his
5 affairs under this chapter.

6 ~~Section 12. Section 94-7-401, R.S.M. 1947, is amended~~
7 ~~to read as follows:~~

8 ~~"94-7-401. Official misconduct. (1) A public servant~~
9 ~~commits the offense of official misconduct when, in his~~
10 ~~official capacity, he commits any of the following acts:~~

11 ~~(a) purposely or negligently fails to perform any~~
12 ~~mandatory duty as required by law or by a court of competent~~
13 ~~jurisdiction; or~~

14 ~~(b) knowingly performs an act in his official capacity~~
15 ~~which he knows is forbidden by law; or~~

16 ~~(c) with the purpose to obtain advantage for himself~~
17 ~~or another, he performs an act in excess of his lawful~~
18 ~~authority or in breach of the public trust of his office or~~
19 ~~employment; or~~

20 ~~(d) solicits or knowingly accepts for the performance~~
21 ~~of any act a fee or reward which he knows is not authorized~~
22 ~~by law; or~~

23 ~~(e) knowingly conducts a meeting of a public agency in~~
24 ~~violation of section 92-3402.~~

25 ~~(2) A public servant convicted of the offense of~~

1 ~~official misconduct shall be fined not to exceed five~~
2 ~~hundred dollars (\$500) or be imprisoned in the county jail~~
3 ~~for a term not to exceed six (6) months, or both~~

4 ~~(3) The district court shall have exclusive~~
5 ~~jurisdiction in prosecutions under this section, and any~~
6 ~~action for official misconduct must be commenced by an~~
7 ~~information filed after leave to file has been granted by~~
8 ~~the district court or after a grand jury indictment has been~~
9 ~~found.~~

10 ~~(4) A public servant who has been charged as provided~~
11 ~~in subsection (3) may be suspended from his office without~~
12 ~~pay pending final judgment. Upon final judgment of~~
13 ~~conviction he shall permanently forfeit his office. Upon~~
14 ~~acquittal he shall be reinstated in his office and shall~~
15 ~~receive all back pay.~~

16 ~~(5) This section does not affect any power conferred~~
17 ~~by law to impeach or remove any public servant or any~~
18 ~~proceeding authorized by law to carry into effect such~~
19 ~~impeachment or removal.~~

-End-